IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE FIFTEENTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE
and
THE HON'BLE MS JUSTICE G.ROHINI

WRIT APPEAL NO : 942 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 2-12-2003 in W.P.No.23931 of 2003 on the file of the High Court.)

Between:

Chitrada Prakasa Rao
R/o 7-7-20, Narsaiah Agraharam,
Bhimavaram, West Godavari District

.... Appellant

and

1. 1. Sivala Satyanarayana, r/o D.No.7-7-22,
Narasaiah Agraharam, Bhimavaram,
West Godavari District

.... Respondent/petitioner

2. The Commissioner, Bhimavaram Municipality,
Bhimavaram, West Godavari District.

3. The Chair Person,
Bhimavaram Municipality, Bhimavaram,
West Godavari
District.

Respondents.

For the Appellant: C.Nageswar Rao, Advocate.

For the Respondent No.1 : Mr.Dantu Srinivas, Advocate

For the Respondent Nos.2 and 3: Y.Rama Thirtha, Advocate

The Court made the following:

ORAL ORDER: (per the Hon'ble the Chief Justice)

The appellant before us is the third respondent in the writ petition and his grievance against the impugned order is that the impugned order was passed and the writ petition was disposed of without giving notice to him.

We have heard the counsel for the parties and gone through the record. It is a fact that no notice was served upon the appellant before the writ petition was decided by the learned single Judge.

The writ petition was filed by the first respondent, who had made grievance that despite representation dated 4-9-2003, the respondent-authority is not taking any action against the appellant, who had started construction of a building without leaving set backs on the side of his house and was proceeding with the construction contrary to the sanctioned plan.

The learned single Judge disposed of the writ petition with a direction to the municipality that it was obliged to see that new constructions have to be made in conformity with the sanctioned plan approved by the municipality. Accordingly, the municipality was

directed to consider the representation of the writ petitioner, if necessary by spot inspection, after giving notice to the writ petitioner and the appellant and in case, after spot inspection and hearing the parties, it was found that the construction is made in contravention of the sanctioned plan or contrary to the building bye-laws, to take action in accordance with law.

As observed by us, even such an innocuous order ought not to have been passed by the learned single Judge without notice to the appellant. In any case, we find that since the order itself is innocuous, no interference is called for by us with such an order since even after hearing the appellant, the order which could legitimately be passed in the writ petition filed by the first respondent would be the same order which the learned single Judge had passed. However, in our view, some clarification is needed because of the apprehension of the appellant that the municipality is likely to take shelter under the order of the learned single Judge and demolish his construction without hearing him and not following the provisions of the law.

Accordingly, we dispose of the appeal with a direction that the municipality will comply with the order passed by the learned single Judge and only in the event of the municipal authorities, after hearing the parties, coming to the conclusion that the construction made by the appellant is in contravention of the sanctioned plan, or is contrary to the building bye laws, appropriate action in accordance with law will

be taken against the offending party. In case any action is taken by the municipality, it is needless to observe, the aggrieved party will be at liberty to challenge the said order in accordance with law.

The writ appeal is accordingly disposed of.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Commissioner, Bhimavaram Municipality, Bhimavaram, West Godavari District.
2. The Chair Person, Bhimavaram Municipality, Bhimavaram, West Godavari District.
3. 2 CD copies.